

HOUSE SUBSTITUTE
FOR
HOUSE BILL NO. 1339

AN ACT

To repeal sections 188.015, 188.028, 188.075,
188.080, and 197.200, RSMo, and to enact in
lieu thereof eight new sections relating to
abortion information and services, with
penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 188.015, 188.028, 188.075, 188.080, and
197.200, RSMo, are repealed and eight new sections enacted in
lieu thereof, to be known as sections 188.015, 188.028, 188.075,
188.080, 188.250, 188.255, 191.715, and 197.200, to read as
follows:

188.015. [Unless the language or context clearly indicates
a different meaning is intended, the following words or phrases
for the purposes of sections 188.010 to 188.130 shall be given
the meaning ascribed to them] As used in this chapter, the
following terms mean:

(1) "Abortion", the intentional destruction of the life of
an embryo or fetus in his or her mother's womb or the intentional
termination of the pregnancy of a mother with an intention other

1 than to increase the probability of a live birth or to remove a
2 dead or dying unborn child;

3 (2) "Abortion facility", a clinic, physician's office, or
4 any other place or facility in which abortions are performed or
5 induced other than a hospital;

6 (3) "Conception", the fertilization of the ovum of a female
7 by a sperm of a male;

8 (4) "Department", the department of health and senior
9 services;

10 [(4)] (5) "Gestational age", length of pregnancy as
11 measured from the first day of the woman's last menstrual period;

12 (6) "Medical emergency", a condition which, on the basis of
13 a physician's good faith clinical judgment, so complicates the
14 medical condition of a pregnant woman as to necessitate the
15 immediate abortion of her pregnancy to avert the death of the
16 pregnant woman or for which a delay will create a serious risk of
17 substantial and irreversible impairment of a major bodily
18 function of the pregnant woman;

19 [(5)] (7) "Physician", any person licensed to practice
20 medicine in this state by the state board of registration of the
21 healing arts;

22 [(6)] (8) "Unborn child", the offspring of human beings
23 from the moment of conception until birth and at every stage of
24 its biological development, including the human conceptus,
25 zygote, morula, blastocyst, embryo, and fetus;

1 [(7)] (9) "Viability", that stage of fetal development when
2 the life of the unborn child may be continued indefinitely
3 outside the womb by natural or artificial life-supportive
4 systems.

5 188.028. 1. No person shall knowingly perform an abortion
6 upon a pregnant woman under the age of eighteen years unless:

7 (1) The attending physician has secured the informed
8 written consent of the minor and one parent or guardian; or

9 (2) The minor is emancipated and the attending physician
10 has received the informed written consent of the minor; or

11 (3) The minor has been granted the right to self-consent to
12 the abortion by court order pursuant to subsection 2 of this
13 section, and the attending physician has received the informed
14 written consent of the minor; or

15 (4) The minor has been granted consent to the abortion by
16 court order, and the court has given its informed written consent
17 in accordance with subsection 2 of this section, and the minor is
18 having the abortion willingly, in compliance with subsection 3 of
19 this section.

20 2. The right of a minor to self-consent to an abortion
21 under subdivision (3) of subsection 1 of this section or court
22 consent under subdivision (4) of subsection 1 of this section may
23 be granted by a court pursuant to the following procedures:

24 (1) The minor or next friend shall make an application to
25 the juvenile court which shall assist the minor or next friend in

1 preparing the petition and notices required pursuant to this
2 section. The minor or the next friend of the minor shall
3 thereafter file a petition setting forth the initials of the
4 minor; the age of the minor; the names and addresses of each
5 parent, guardian, or, if the minor's parents are deceased and no
6 guardian has been appointed, any other person standing in loco
7 parentis of the minor; that the minor has been fully informed of
8 the risks and consequences of the abortion; that the minor is of
9 sound mind and has sufficient intellectual capacity to consent to
10 the abortion; that, if the court does not grant the minor
11 majority rights for the purpose of consent to the abortion, the
12 court should find that the abortion is in the best interest of
13 the minor and give judicial consent to the abortion; that the
14 court should appoint a guardian ad litem of the child; and if the
15 minor does not have private counsel, that the court should
16 appoint counsel. The petition shall be signed by the minor or
17 the next friend;

18 (2) A hearing on the merits of the petition, to be held on
19 the record, shall be held as soon as possible within five days of
20 the filing of the petition. If any party is unable to afford
21 counsel, the court shall appoint counsel at least twenty-four
22 hours before the time of the hearing. At the hearing, the court
23 shall hear evidence relating to the emotional development,
24 maturity, intellect and understanding of the minor; the nature,
25 possible consequences, and alternatives to the abortion; and any

1 other evidence that the court may find useful in determining
2 whether the minor should be granted majority rights for the
3 purpose of consenting to the abortion or whether the abortion is
4 in the best interests of the minor;

5 (3) In the decree, the court shall for good cause:

6 (a) Grant the petition for majority rights for the purpose
7 of consenting to the abortion; or

8 (b) Find the abortion to be in the best interests of the
9 minor and give judicial consent to the abortion, setting forth
10 the grounds for so finding; or

11 (c) Deny the petition, setting forth the grounds on which
12 the petition is denied;

13 (4) If the petition is allowed, the informed consent of the
14 minor, pursuant to a court grant of majority rights, or the
15 judicial consent, shall bar an action by the parents or guardian
16 of the minor on the grounds of battery of the minor by those
17 performing the abortion. The immunity granted shall only extend
18 to the performance of the abortion in accordance herewith and any
19 necessary accompanying services which are performed in a
20 competent manner. The costs of the action shall be borne by the
21 parties;

22 (5) An appeal from an order issued under the provisions of
23 this section may be taken to the court of appeals of this state
24 by the minor or by a parent or guardian of the minor. The notice
25 of intent to appeal shall be given within twenty-four hours from

1 the date of issuance of the order. The record on appeal shall be
2 completed and the appeal shall be perfected within five days from
3 the filing of notice to appeal. Because time may be of the
4 essence regarding the performance of the abortion, the supreme
5 court of this state shall, by court rule, provide for expedited
6 appellate review of cases appealed under this section.

7 3. If a minor desires an abortion, then she shall be orally
8 informed of and, if possible, sign the written consent required
9 by section 188.039 in the same manner as an adult person. No
10 abortion shall be performed on any minor against her will, except
11 that an abortion may be performed against the will of a minor
12 pursuant to a court order described in subdivision (4) of
13 subsection 1 of this section that the abortion is necessary to
14 preserve the life of the minor.

15 4. For purposes of this section, the term "next friend"
16 shall not include another minor child or any person, party,
17 conservator, or business entity that has a financial interest or
18 potential gain from the minor child's decision to have an
19 abortion.

20 188.075. 1. Any person who contrary to the provisions of
21 sections 188.010 to 188.085 knowingly performs, induces, or aids
22 in the performance or inducing of any abortion or knowingly fails
23 to perform any action required by sections 188.010 to 188.085
24 [shall be] is, unless a different penalty is provided for in a
25 section, guilty of a class A misdemeanor and, upon conviction,

1 shall be punished as provided by law.

2 2. It shall be a defense for any person alleged to have
3 violated any provision of this chapter that the person performed
4 an action or did not perform an action because of a medical
5 emergency. This defense shall be available in criminal, civil,
6 and administrative actions or proceedings. The defendant shall
7 have the burden of injecting the issue of medical emergency as a
8 defense.

9 188.080. Notwithstanding any other penalty provision in
10 this chapter, any person who is not a licensed physician as
11 defined in section 188.015 who performs or attempts to perform an
12 abortion on another as defined in subdivision (1) of section
13 188.015, is guilty of a class B felony, and, upon conviction,
14 shall be punished as provided by law. Any physician performing
15 an abortion who does not have [surgical] clinical privileges to
16 provide obstetrical or gynecological care at a hospital located
17 within thirty miles of the location at which the abortion is
18 performed which offers obstetrical or gynecological care shall be
19 guilty of a class B felony, and, upon conviction shall be
20 punished as provided by law.

21 188.250. 1. No person shall intentionally cause, aid, or
22 assist a minor to obtain an abortion without the consent or
23 consents or judicial decree required by section 188.028, RSMo.

24 2. A person who is subject to the jurisdiction of this
25 state and who violates subsection 1 of this section shall be

1 civilly liable to the minor and to the person or persons required
2 to give the consent or consents pursuant to section 188.028. A
3 court may award damages to any person adversely affected by a
4 violation of this section, including compensation for emotional
5 injury without the need for personal presence at the scene of any
6 act or event, and the court may further award attorneys' fees,
7 litigation costs, and punitive damages.

8 3. It shall not be a defense to a claim brought pursuant to
9 this section that the abortion was performed or induced pursuant
10 to consent to the abortion given in a manner that is otherwise
11 lawful in the state or place where the abortion was performed or
12 induced.

13 4. An unemancipated minor does not have capacity to consent
14 to any action in violation of this section or section 188.028.

15 5. A court may enjoin conduct that would be in violation of
16 this section upon petition by the attorney general, a prosecuting
17 or circuit attorney, or any person adversely affected or who
18 reasonably may be adversely affected by such conduct, upon a
19 showing that such conduct:

20 (1) Is reasonably anticipated to occur in the future; or

21 (2) Has occurred in the past, whether with the same minor
22 or others, and that it is not unreasonable to expect that under
23 similar circumstances such conduct will be repeated.

24 188.255. 1. For purposes of this section, "emergency
25 contraception" means any drug or device approved by the Food and

1 Drug Administration that is prescribed or distributed to prevent
2 fertilization after intercourse or, if fertilization occurs, to
3 prevent implantation of the resulting blastocyst or embryo.

4 2. The department of health and senior services shall
5 endeavor to raise public awareness of the methods of which
6 emergency contraception works, its risks and benefits, and to
7 promote appropriate counseling for emergency contraception. The
8 department shall develop and distribute information to hospitals,
9 health care providers, pharmacists, and the community which
10 describes the risks and effects of emergency contraception, the
11 methods by which emergency contraception may prevent or affect
12 pregnancy, the rate of effectiveness of emergency contraception
13 when used correctly, and the increased risks to health of
14 incorrect use of emergency contraception. The informational
15 materials of the department shall stress that under state law and
16 the findings of scientific research, a new human individual comes
17 into being upon fertilization, that the new human individual
18 grows and develops for approximately a week before implantation,
19 and that if fertilization occurs, emergency contraception may
20 result in the loss of life of that new human individual by
21 preventing implantation.

22 191.715. 1. This section shall be known and may be cited
23 as the "Woman's Right to Know Act".

24 2. For purposes of this section, "emergency contraception"
25 means any drug or device approved by the Food and Drug

1 Administration that prevents pregnancy after intercourse.

2 3. The division of maternal, child, and family health
3 within the department of health and senior services shall
4 endeavor to raise public awareness by informing hospitals, health
5 care providers, pharmacists, and the community of the existence
6 and availability of emergency contraception. The division shall
7 also endeavor to promote appropriate counseling and referrals for
8 all contraceptive drugs and devices, including emergency
9 contraception, that are approved by the Food and Drug
10 Administration. The division shall develop and distribute
11 information which describes the contraceptive drugs and devices
12 that are available and stresses the availability of emergency
13 contraception, its use and safety, and its effectiveness in
14 preventing pregnancy if taken as soon as possible after
15 intercourse. The information shall stress that emergency
16 contraception is a method of pregnancy prevention that cannot
17 harm or terminate an established pregnancy. The information
18 shall also inform women that pursuant to section 376.1199, RSMo,
19 health insurance plans that cover prescription drugs must also
20 cover contraceptive drugs and devices.

21 197.200. As used in sections 197.200 to 197.240, unless the
22 context clearly indicates otherwise, the following terms mean:

23 (1) "Ambulatory surgical center", any public or private
24 establishment operated primarily for the purpose of performing
25 surgical procedures or primarily for the purpose of performing

1 childbirths or any establishment operated for the purpose of
2 performing or inducing any second or third-trimester abortions or
3 five or more first-trimester abortions per month, and which does
4 not provide services or other accommodations for patients to stay
5 more than twenty-three hours within the establishment, provided,
6 however, that nothing in this definition shall be construed to
7 include the offices of dentists currently licensed pursuant to
8 chapter 332, RSMo;

9 (2) "Dentist", any person currently licensed to practice
10 dentistry pursuant to chapter 332, RSMo;

11 (3) "Department", the department of health and senior
12 services;

13 (4) "Governmental unit", any city, county or other
14 political subdivision of this state, or any department, division,
15 board or other agency of any political subdivision of this state;

16 (5) "Person", any individual, firm, partnership,
17 corporation, company, or association and the legal successors
18 thereof;

19 (6) "Physician", any person currently licensed to practice
20 medicine pursuant to chapter 334, RSMo;

21 (7) "Podiatrist", any person currently licensed to practice
22 podiatry pursuant to chapter 330, RSMo.